SUBJECT: Equalizing reimbursement rates for women's health-care services

COMMITTEE: Insurance — favorable, with amendment

VOTE: 8 ayes — Smithee, Averitt, Burnam, G. Lewis, J. Moreno, Olivo, Seaman, Thompson

0 nays

1 absent — Eiland

SENATE VOTE: On final passage, April 19 — voice vote (Ogden recorded nay)

WITNESSES: None

DIGEST: SB 8, as amended, would require regulation of reimbursement rates for women's health services under the Insurance Code. It would apply to health-benefit plans offered by insurers, including health insurance companies and health maintenance organizations. It would require that reimbursement rates for reproductive health and oncology services for women be equivalent to those for men or for the general population.

Insurers that did not provide equal reimbursement would be subject to the sanctions, administrative penalties up to $25,000, and cease-and-desist orders authorized by the Insurance Code. The insurance commissioner could direct the insurer to make complete restitution or pay the amount of economic damages, whichever was greater, including reasonable attorney's fees. The commissioner would have to make a determination of a violation and impose the appropriate sanctions within 120 days of the filing of a complaint.

A person, including a provider, affected by an order of the commissioner could file an appeal in district court. The standard of review would be substantial evidence. If the commissioner failed to make a determination within 120 days, the claimant could bring action in court for a violation of the bill's provisions within 12 months of the date when the time limit for the commissioner's determination expired. In such a suit, the court could impose

the same or similar sanctions to those authorized for the commissioner, including an additional penalty of $25,000 if the court found that the insurer knowingly committed a violation. The court also could award attorney's fees and court costs, including expert witness fees, if the claimant prevailed. In cases in which the action was found to be groundless, the court would have to award the insurer attorney's fees.

The bill would not require a health-benefit plan to provide reimbursement for an abortion or related services.

Within 90 days of the bill's effective date, the Texas Board of Health, the Texas Board of Human Services, and the Texas Department of Insurance would have to adopt rules necessary to implement the bill and would have to repeal any contrary rules. The rules would have to require providers to justify any disparity in reimbursement rates for providing health-care services and would have to require that any disparity reflect differences in time or resources spent to provide the services.

The bill would take effect September 1, 2001, and would apply only to an insurance policy issued or renewed on or after January 1, 2002.

SUPPORTERS SAY:

SB 8 would ensure that physicians and other health-care providers are reimbursed fairly for women's health services. It would prevent insurers from discriminating against their female enrollees by paying less for services. Insurers' reimbursement rates should not be based on gender but on the types of services provided.

There is a significant disparity in reimbursement rates and liability insurance premiums for women-specific procedures in Texas. The average reimbursement for services such as childbirth is not equivalent for services that require similar amounts of time and training. For example, the average reimbursement for childbirth, which involves many hours of a physician's time, is $2,000, while the average reimbursement for a standard appendectomy is $1,400, which only involves a couple of hours. Also, the liability insurance rates for OB-GYNs are fifty percent higher than for general surgeons. The state should address this problem before the disincentive to practice in women's health services compromises the health of Texas' women.

Discriminatorily low reimbursement rates have pushed OB-GYNs out of the rural market. According to the State Board of Medical Examiners, 156 of the state's 254 counties do not have any obstetricians or gynecologists, leaving almost one million women in Texas without access to physician specializing in treating women's health needs in the county where they live. The problem affects urban areas as well. Earlier this year, low reimbursement rates forced the Renaissance Women's Health Clinic in Austin to close, even though it served 1,000 expectant mothers and had a six-month waiting list.

A provider should be able to obtain restitution from an insurer that injures the provider by not following proper reimbursement procedures. Systemic underpayment for certain services that could constitute a significant portion of a physician's practice can result in financial hardship for the physician. Insurers that followed the law would not be held liable and would have no reason to oppose providers' right to obtain restitution.

OPPONENTS SAY:

SB 8 assumes widespread discrimination against women's health services by insurers in Texas, but no evidence exists to demonstrate such discrimination. Disparities in reimbursement rates stem from differences in procedures between certain gender-specific health services, not from bias. If anything, in areas such as maternity, there is a bias toward women's services. In recent years, hospitals have invested significant sums of money to improve maternity services and to attract female consumers. No similar trend has been seen in male-only services, such as male health clinics.

The fees for these services are well known to both providers and insurers. If a provider would prefer a higher reimbursement rate, that could be a point of negotiation between the two contracting entities. Specialists who provide women's health services have a level of influence not enjoyed by other groups of physicians. If those specialists feel that the reimbursement rates are too low, they should negotiate for higher rates.

SB 8 would expose insurers to unreasonable investigation and possibly litigation. The many factors that go into calculating the value of a service would make it difficult to determine whether a rate was consistent with similar services provided to the general public. A physician's cursory analysis of costs indicating a disparity could become the basis for complaint to the insurance commissioner. Insurers already are subject to sanctions if

they do not follow the law. They should not also be subject to unnecessary investigations and possible litigation.

SB 8 would drive up the costs of health care for consumers. Rather than helping women, it would help physicians earn more money. The state should not legislate how much a certain group of physicians earns under the guise of equal health care for women. The state should not subsidize physician's liability insurance premiums with higher reimbursement because the premiums reflect the level of risk of liability that physician's assume. If a physician wants to practice in an area that has high likelihood of lawsuits, that physician should expect to pay high liability insurance premiums as a cost of doing business.

NOTES: The committee amendment to the Senate-passed version of the bill would remove provisions on penalties and actions for damages and replace them with provisions that would authorize providers to seek judicial review following a determination by the insurance commissioner or if the commissioner did not issue a determination within 120 days.